

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals  
for the Second Circuit, held at the Daniel Patrick Moynihan  
United States Courthouse, 500 Pearl Street, in the City of  
New York, on the 28<sup>th</sup> day of March, two thousand eight.

**PRESENT:**

HON. JOSEPH M. McLAUGHLIN,  
HON. ROSEMARY S. POOLER,  
HON. BARRINGTON D. PARKER,  
*Circuit Judges.*

XIU LAN ZOU,  
*Petitioner,*

v.

MICHAEL B. MUKASEY, UNITED STATES  
ATTORNEY GENERAL,<sup>1</sup>  
*Respondent.*

07-3358-ag  
NAC

<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1     **FOR PETITIONER:**                 **Melissa Desvarieaux, Christophe &**  
2   **Associates, P.C., New York, New**  
3   **York.**

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5     **FOR RESPONDENT:**                **Jeffrey S. Bucholtz, Acting**  
6   **Assistant Attorney General, Mark C.**  
7   **Walters, Assistant Director, Annette**  
8   **M. Wietecha, Office of Immigration**  
9   **Litigation, United States Department**  
10                                        **of Justice, Washington, D.C.**  
11  
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13             UPON DUE CONSIDERATION of this petition for review of a  
14     Board of Immigration Appeals ("BIA") decision, it is hereby  
15     ORDERED, ADJUDGED, AND DECREED that the petition for review  
16     is DENIED.

17             Petitioner Xiu Lan Zou, a native and citizen of China,  
18     seeks review of a July 11, 2007 order of the BIA affirming  
19     the August 22, 2005 decision of Immigration Judge ("IJ")  
20     Theresa Holmes-Simmons, denying Zou's applications for  
21     asylum, withholding of removal, and relief under the  
22     Convention Against Torture ("CAT"). *In re Zou*, No. A 95 673  
23     374 (B.I.A. July 11, 2007), *aff'g* No. A 95 673 374 (Immig.  
24     Ct. N.Y. City Aug. 22, 2005). We assume the parties'  
25     familiarity with the underlying facts and procedural history  
26     of this case.

27             When the BIA does not expressly "adopt" the IJ's  
28     decision, but its brief opinion closely tracks the IJ's  
29     reasoning, the Court may consider both the IJ's and the

1 BIA's opinions for the sake of completeness if doing so does  
2 not affect the Court's ultimate conclusion. *Jigme Wangchuck*  
3 *v. DHS*, 448 F.3d 524, 528 (2d Cir. 2006). We review the  
4 agency's factual findings under the substantial evidence  
5 standard, treating them as "conclusive unless any reasonable  
6 adjudicator would be compelled to conclude to the contrary."  
7 8 U.S.C. § 1252(b)(4)(B); see *Zhou Yun Zhang v. INS*, 386  
8 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled in part on other*  
9 *grounds by Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d  
10 296, 305 (2d Cir. 2007) (En Banc). However, we will vacate  
11 and remand for new findings if the agency's reasoning or its  
12 fact-finding process was sufficiently flawed. *Cao He Lin v.*  
13 *U.S. Dep't of Justice*, 428 F.3d 391, 406 (2d Cir. 2005). We  
14 review *de novo* questions of law and the application of law  
15 to undisputed fact. See, e.g., *Secaida-Rosales v. INS*, 331  
16 F.3d 297, 307 (2d Cir. 2003).

17 We note at the outset that in her brief to this Court,  
18 Zou challenges only the denial of her applications for  
19 withholding of removal and CAT relief. In addition, to the  
20 extent that Zou argues that she is likely to be persecuted  
21 on account of her mother's forced sterilization, her beliefs  
22 regarding the family planning policy, or her general

1 opposition to the Communist regime, we decline to review  
2 those arguments where they were not exhausted before the  
3 BIA. See *Lin Zhong v. U.S. Dep't of Justice*, 480 F.3d 104,  
4 119-20, 124 (2d Cir. 2007); *Foster v. INS*, 376 F.3d 75, 78  
5 (2d Cir. 2004).

6 To the extent that the agency denied withholding of  
7 removal and CAT relief based on Zou's claims regarding her  
8 illegal departure from China, we find no error in the  
9 agency's decision. However, we have held that any harm an  
10 applicant may face based on her illegal departure would  
11 constitute prosecution, not persecution. See *Saleh v. U.S.*  
12 *Dep't of Justice*, 962 F.2d 234, 239 (2d Cir. 1992)  
13 ("[p]unishment for violation of a generally applicable  
14 criminal law is not persecution."); see also *In re Sibrun*,  
15 18 I.& N. Dec. 354.<sup>2</sup> We thus find no error in the agency's  
16 denial of Zou's application for withholding of removal.

17 Zou also contends that the agency erred in denying her  
18 application for CAT relief. We have held that without any

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<sup>2</sup>This case must be distinguished from those in which an individual faces "long years of imprisonment" simply for having fled a cruel dictatorship. Cf. *Sovich v. Esperdy*, 319 F.2d 21, 29 (2d Cir. 1963). Here, the agency evaluated the record and found that Zou had failed to show that she would face "particularly harsh punishment."

1 particularized evidence, an applicant cannot demonstrate  
2 that he or she is more likely than not to be tortured "based  
3 solely on the fact that she is part of the large class of  
4 persons who have illegally departed China" and on  
5 generalized evidence indicating that torture occurs in  
6 Chinese prisons. *Mu Xiang Lin v. U.S. Dep't of Justice*, 432  
7 F.3d 156, 160 (2d Cir. 2005) (emphasis in the original).  
8 Here, Zou refers to documents indicating that some  
9 repatriated individuals are imprisoned and that Chinese  
10 prisoners are tortured. Such evidence, however, provides no  
11 basis for the agency to conclude that she, or someone in her  
12 "particular alleged circumstances," faces an elevated risk  
13 of torture. See *Mu-Xing Wang v. Ashcroft*, 320 F.3d 130,  
14 143-44 (2d Cir. 2003). Accordingly, the BIA did not err in  
15 denying Zou's application for CAT relief.

16 For the foregoing reasons, the petition for review is  
17 DENIED. Any pending request for oral argument in this  
18 petition is DENIED.

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21 FOR THE COURT:  
22 Catherine O'Hagan Wolfe, Clerk  
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By: \_\_\_\_\_